

TITLE 83: PUBLIC UTILITIES
CHAPTER I: ILLINOIS COMMERCE COMMISSION
SUBCHAPTER C: ELECTRIC UTILITIES

PART 412
OBLIGATIONS OF RETAIL ELECTRIC SUPPLIERS

SUBPART A: GENERAL

Section	
412.10	Definitions
412.20	Waiver

SUBPART B: MARKETING PRACTICES

Section	
412.100	Application of Subpart B
412.110	Uniform Disclosure Statement
412.120	Door-to-Door Solicitation
412.130	Telemarketing
412.140	Inbound Enrollment Calls
412.150	Direct Mail
412.160	Online Marketing
412.170	Training of Sales Agents
412.180	Records Retention and Availability

SUBPART C: RESCISSION, DEPOSITS, EARLY TERMINATION AND AUTOMATIC
CONTRACT RENEWAL

Section	
412.200	Application of Subpart C
412.210	Rescission of Sales Contract
412.220	Deposits
412.230	Early Termination Fee
412.240	Contract Renewal
412.250	Assignment

SUBPART D: DISPUTE RESOLUTION AND CUSTOMER COMPLAINT REPORTS

Section	
412.300	Application of Subpart D
412.310	Required RES Information
412.320	Dispute Resolution

AUTHORITY: Implementing Section 16-118 of the Public Utilities Act [220 ILCS 5/16-118] and authorized by Section 10-101 of the Public Utilities Act [220 ILCS 5/10-101].

SOURCE: Adopted at ___ Ill. Reg. _____, effective _____.

SUBPART A: GENERAL

Section 412.10 Definitions

“Act” means the Public Utilities Act [220 ILCS 5].

“Alternative retail electric supplier” or “ARES” means the same as that term is defined in Section 16-102 of the Act [220 ILCS 5/16-102].

“Commission” means the Illinois Commerce Commission.

“Complaint” means an objection made to an entity, by a customer or another entity, as to its charges, facilities or service, the disposal of which complaint requires investigation or analysis.

“Customer” means the same as “Retail Customer” as that term is defined in Section 16-102 of the Act.

“Electric utility” means the same as that term is defined in Section 16-102 of the Act.

“Letter of Agency” means the document described in Section 2EE of the Consumer Fraud and Deceptive Business Practices Act [815 ILCS 505/2EE] and referenced in Section 16-115A of the Public Utilities Act [220 ILCS 5/16-115A].

“Retail electric supplier” or “RES” includes both alternative retail electric suppliers and electric utilities serving or seeking to serve retail customers pursuant to Section 16-116 of the Act [220 ILCS 5/16-116].

“Sales agent” means any employee, agent, independent contractor, consultant, or other person that is engaged by the RES to solicit customers to purchase, enroll in, or contract for power and energy service on behalf of a RES.

“Small commercial customer” means a nonresidential customer of an electric utility consuming 15,000 kilowatt-hours or less of electricity annually in its service area. A RES may remove the customer from designation as a "small commercial customer" if the customer consumes more than 15,000 kilowatt-hours of electricity in any calendar year after becoming a customer of the RES. In determining whether a customer is a small commercial customer, usage by the same commercial customer shall be aggregated to include usage at the same premises even if measured by more than one meter, and to include usage at multiple premises. Nothing in this Part creates an affirmative obligation on an electric utility to monitor or inform customers or RESs as to a customer's status as

a small commercial customer as that term is defined herein. Nothing in this Part relieves an electric utility from any obligation to provide information upon request to a customer, a RES, the Commission, or others necessary to determine whether a customer meets the classification of small commercial customers as that term is defined herein.

“Third Party Verification” means the process described in Section 2EE of the Consumer Fraud and Deceptive Business Practices Act and referenced in Section 16-115A of the Public Utilities Act.

Section 412.20 Waiver

- a) The Commission, on application or petition of a RES or electric utility, may grant a temporary or permanent waiver from this Part, or any subsections contained in this Part, in individual cases where the Commission finds that:
 - 1) the provision from which the waiver is granted is not statutorily mandated;
 - 2) no party will be injured by the granting of the waiver; and
 - 3) the rule from which the waiver is granted would, as applied to the particular case, be unreasonable or unnecessarily burdensome.
- b) The burden of proof in establishing a right to waiver shall be on the party seeking the waiver.

SUBPART B: MARKETING PRACTICES

Section 412.100 Application of Subpart B

- a) The provisions of this Subpart shall only apply to RESs serving or seeking to serve residential or small commercial customers, and only to the extent that the RESs provide services to residential or small commercial customers.
- b) The following exceptions apply: Sections 412.170(a), (b) and (c) and 412.180 shall apply to RESs serving or seeking to serve any retail customer.

Section 412.110 Uniform Disclosure Statement

In addition to providing the customer with a copy of the sales contract, a RES or one of its sales agents must disclose the following information to the customer prior to any enrollment for electric service, regardless of the form of marketing used. The written Uniform Disclosure statement must use 12 point font or larger, and, if it is a separate document, it must not exceed two pages in length:

- a) The legal name of the RES; and the name under which the RES will market its products, if different;
- b) The RES's business address;
- c) The RES's toll free telephone number for billing questions, disputes, and complaints;
- d) The charges for the service for the length of the contract: if any charges are variable during the term of the contract, an explanation of how the variable charges are determined;
- e) The length of the agreement including any possible automatic renewal clause;
- f) The presence or absence of early termination fees or penalties, and applicable amounts or the formula pursuant to which they are calculated;
- g) Any requirement to pay a deposit for power and energy service, the estimated amount of the deposit or basis on which it is calculated, when the deposit will be returned, and if the deposit will accrue interest;
- h) Any fees assessed by the RES to a customer for switching to the RES;
- i) The name of the power and energy service for which the customer is being solicited;
- j) A statement that the customer may rescind the agreement within ten calendar days after the electric utility processes the enrollment request by contacting either the RES or the electric utility and provide both phone numbers;
- k) A statement that the RES is an independent seller of power and energy service, and that the sales agent is not representing or acting on behalf of the electric utility, governmental bodies, or consumer groups;
- l) A statement that the electric utility remains responsible for the delivery of power and energy to the customer's premise and will continue to respond to any service calls and emergencies and that switching to a RES will not impact the customer's electric service reliability;
- m) A statement that the customer will receive written notification from the electric utility confirming a switch of the customer's power and energy supplier;
- n) If savings are guaranteed under certain circumstances, the RES must provide a written statement, in plain language, describing the conditions that must be present in order for the savings to occur; and

- o) If a product is being offered at a fixed monthly charge that does not change with the customer's usage and the fixed monthly charge does not include delivery service charges, the RES must provide a statement to the customer that the fixed monthly charge is for supply charges only and that it does not include delivery service charges and applicable taxes; therefore the fixed monthly charge is not the total monthly amount for electric service.

Section 412.120 Door-to-Door Solicitation

- a) Sales agents who engage in door-to-door solicitation for the purpose of selling power and energy service offered by the RES shall display identification. This identification shall be visible at all times and prominently display the following:
 - 1) The sales agent's full name in reasonable size type face;
 - 2) A photograph of the sales agent;
 - 3) The trade name and logo of the RES they are representing. If the sales agent is selling power and energy services from multiple RESs to the customer, the identification shall display the trade name and logo of the agent, broker or consultant entity as that entity is defined in Section 16-115C of the Act.
- b) The sales agent shall leave the premises of a customer if requested to do so by the customer, the owner, or an occupant of the premises.
- c) The sales agent shall ensure that, during the sales presentation to the customer items (d) – (o) of the Uniform Disclosure Statement (Section 412.110(d) through (o)) are verbally disclosed to the customer. A sales agent may disclose the items in any order as long as all applicable items are explained to the customer during the sales presentation.
- d) If a power and energy service is being offered at a fixed monthly charge that does not change with the customer's usage and the fixed monthly charge does not include delivery service charges, the sales agent shall explain to the customer that the fixed monthly charge is for supply charges only and that it does not include delivery service charges and applicable taxes; therefore the fixed monthly charge is not the total monthly amount for electric service.
- e) If a customer's enrollment is authorized by the customer signing a Letter of Agency, the sales agent shall require the customer to initial the written Uniform Disclosure Statement, a copy of which is to be left with the customer at the conclusion of the sales visit. The minimum list of items to be included in the Uniform Disclosure Statement is contained in Section 412.110.
- f) If a customer's enrollment is authorized by third-party verification during door-

to-door solicitation, the third-party verification shall require the customer to verbally acknowledge that a copy of the Uniform Disclosure Statement was left with the customer, and that he or she understands items (d) –(o) of the Uniform Disclosure Statement .

- g) Where it is apparent that a customer's English language skills are insufficient to allow the customer to understand and respond to the information conveyed by the sales agent in English or where the customer or another third party informs the sales agent of this circumstance, the sales agent shall either find another sales representative for the RES who is fluent in the customer's language to continue the marketing activity in his/her stead, use an interpreter at the premise, or terminate the in-person contact with the customer. When the use of an interpreter is necessary, a form consistent with Section 2N of the Consumer Fraud and Deceptive Business Practices Act [815 ILCS 505/2N] must be completed.
- h) Upon a customer's request, the RES and its sales agents shall refrain from any further marketing to that customer.

Section 412.130 Telemarketing

- a) In addition to complying with the Telephone Solicitations Act [815 ILCS 413], sales agents who contact customers by telephone for the purpose of selling power and energy service shall provide the sales agent's name and, on request, the identification number if available;
- b) Where it is apparent that a customer's English language skills are insufficient to allow the customer to understand a telephone solicitation in English, and the customer or another third party informs the sales agent of this circumstance, the sales agent must transfer the customer to a representative who speaks the customer's language, if such a representative is available, or terminate the call.
- c) A sales agent shall ensure that during the sales presentation to the customer items (d) – (o) of the Uniform Disclosure Statement (Section 412.110(d) – (o)) are verbally disclosed to the customer. A sales agent may disclose the items in any order so long as all applicable items are explained to the customer during the sales presentation.
- d) If a power and energy service is being offered at a fixed monthly charge that does not change with the customer's usage and the fixed monthly charge does not include delivery service charges, the sales agent must explain to the customer that the fixed monthly charge is for supply charges only and that it does not include delivery service charges and applicable taxes; therefore the fixed monthly charge is not the total monthly amount for electric service.
- e) If a sales agent engages in telemarketing and third-party verification is used to authorize a customer's enrollment, the third-party verification must require the

customer to verbally acknowledge that he or she understands items (d) – (o) of the Uniform Disclosure Statement Section 412.110.

- f) The Uniform Disclosure Statement and sales contract must be provided to the customer within three business days after the electric utility's confirmation of an accepted enrollment.
- g) Upon a customer's request, the RES and its sales agents shall refrain from any further marketing to that customer.

Section 412.140 Inbound Enrollment Calls

If a customer initiates a call to a sales agent in order to enroll for service, the sales agent must:

- a) Follow the requirements in Section 2EE of the Consumer Fraud and Deceptive Business Practices Act [815 ILCS 505/2EE]
- b) Verbally disclose to the customer items (d) – (o) of the Uniform Disclosure Statement (Section 412.110(d) – (o)). A sales agent may disclose the items in any order so long as all applicable items are explained to the customer during the sales presentation.
- c) Require the customer to verbally acknowledge that he or she understands items (d) – (o) contained in the Uniform Disclosure Statement (Section 412.110).
- d) Send the Uniform Disclosure Statement and sales contract to the customer within 3 business days after the electric utility's confirmation of an accepted enrollment.

Section 412.150 Direct Mail

- a) A RES or one of its sales agents contacting customers for enrollment for power and energy service by direct mail or e-mail shall include the items of the Uniform Disclosure Statement (Section 412.110) for the service being solicited.
- b) If a written Letter of Agency is being used to authorize a customer's enrollment, it shall contain a statement that the customer has read and understood the items contained in the Uniform Disclosure Statement Section 412.110. The document containing the items of the Uniform Disclosure Statement must remain with the customer.

Section 412.160 Online Marketing

- a) Each RES offering power and energy service to customers online shall display the

items of the Uniform Disclosure Statement (Section 412.110) for any services offered through online enrollment before requiring the customer to enter any personal information other than zip code, electric utility service territory, and/or type of service being sought.

- b) The document containing the items of the Uniform Disclosure Statement must be printable in a PDF format not to exceed two pages in length, and shall be available electronically to the customer.
- c) The RES shall obtain, in accordance with 83 Ill. Adm. Code 453 and Section 2EE of the Consumer Fraud Act, an authorization to change RESs that confirms and includes appropriate verification data by encrypted customer input on the RES web site.
- d) The enrollment website of the RES shall, at a minimum, include:
 - 1) All items within the Uniform Disclosure Statement (Section 412.110);
 - 2) A statement that electronic acceptance of a sales contract is an agreement to initiate service and begin enrollment;
 - 3) A statement that the customer should consult the sales contract and/or contact the current supplier to learn if any early termination fees are applicable;
 - 4) An e-mail address and phone number where the customer can express a decision to rescind the sales contract.

Section 412.170 Training of Sales Agents

- a) A sales agent shall be knowledgeable of the requirements applicable to the marketing and sales of power and energy service to the customer class that he or she is targeting. In addition to this Part, requirements pertaining to the marketing and sales of power and energy service may be found in other rules, the Act, and, the Consumer Fraud and Deceptive Business Practices Act.
- b) All sales agents should be familiar with power and energy services that they sell, including the rates, payment and billing options, the customers' right to cancel, and applicable termination fees, if any. In addition, the sales agents shall have the ability to provide the customer with a toll-free number for billing questions, disputes, and complaints, as well as the Commission's toll-free phone number for complaints.
- c) A RES and its sales agents shall not utilize false, misleading, materially inaccurate, or otherwise deceptive language or materials in soliciting or providing services.

- d) A RES and its sales agents shall refrain from any direct marketing or soliciting of power and energy service to customers on the electric utility's Do Not Market List, which the electric utility shall make available at least monthly on the 15th calendar day of the month. If the 15th calendar day is a non-business day, the electric utility shall make the list available on the next business day following the 15th calendar day of that month. The Do Not Market List maintained by the electric utility shall contain the customer's name, service address, and phone number(s). A RES shall use the most current version of the Do Not Market List available; however, in assessing compliance with this section, 31 days will be afforded to a RES to account for the time required by the RES to disseminate and process the list internally.

Section 412.180 Records Retention and Availability

- a) A RES must retain, for a minimum of two years or for the length of the sales contract, whichever is longer, verifiable proof of authorization to change suppliers for each customer. Authorization records need to be provided by the RES within seven business days upon request by the Commission or Commission Staff.
- b) Throughout the duration of the contract, and for two years thereafter, the RES shall retain and, within seven business days after the customer's request, provide the customer a copy of the sales contract via e-mail, U.S. mail, or facsimile. The RES may charge a fee for such copies if a customer requests more than two copies in a 12-month period.

SUBPART C: RESCISSION, DEPOSITS, EARLY TERMINATION AND AUTOMATIC CONTRACT RENEWAL

Section 412.200 Application of Subpart C

The provisions of this Subpart shall only apply to RESs serving or seeking to serve residential or small commercial customers, and only to the extent such RESs provide services to residential or small commercial customers.

Section 412.210 Rescission of Sales Contract

Within one business day after accepting a valid electronic enrollment request from the RES, the electric utility shall notify the customer in writing of the scheduled enrollment and provide the name of the RES that will be providing power and energy service. The written enrollment notice from the electric utility shall state the last day for making a request to rescind the enrollment, and provide contact information for the RES. If the customer wishes to rescind its enrollment with the supplier, the customer will not incur any early termination fees if the customer contacts either the electric utility or the RES within ten calendar days after the electric utility's acceptance of the enrollment request. If the tenth calendar day falls on a non-business day, the rescission period

will be extended through the next business day. In the event the customer provides notice of such rescission to the electric utility, the electric utility shall notify the RES.

Section 412.220 Deposits

A RES shall not require a customer deposit if the RES is selling the receivables for power and energy for that customer to the electric utility pursuant to Section 16-118(c) of the Act.

Section 412.230 Early Termination Fee

Any agreement between a RES and a customer that contains an early termination fee shall disclose the amount of the early termination fee or the formula used to calculate the termination fee. Any such agreement must also state that the early termination fee does not apply if the customer cancels the contract within the rescission period described in Section 412.210. In addition, any agreement that contains an early termination fee shall provide the customer the opportunity to terminate the agreement without any termination fee or penalty within 10 business days after the date of the first bill issued to the customer for products or services provided by the RES. This requirement does not relieve the customer of obligations for services rendered under the agreement prior to termination.

Section 412.240 Contract Renewal

- a) Non-Automatic Renewal. The RES shall clearly disclose any renewal terms in its contracts including any cancellation procedure. For contracts with an initial term of six months or more, the RES shall send a notice of contract expiration separate from the bill at least 30 days prior to the date of contract expiration but no more than 60 days in advance of expiration. Nothing in this Section shall preclude a RES from offering a new contract to the customer at any other time during the contract period. The separate written notice of contract expiration shall include:
 - 1) A statement printed or visible from the outside of the envelope or in the subject line of the email (if customer has agreed to receive official documents by e-mail) that states, "Contract Expiration Notice;"
 - 2) The anticipated bill cycle in which the existing contract will expire;
 - 3) A full description of the renewal offer, including the date service would begin under the new offer; and
 - 4) A statement, in at least 12 point font, that the customer must provide affirmative consent to accept the renewal offer and that establishing service with another RES can take up to 45 days and that failure to renew the existing contract or switch to another RES may result in the customer being reverted to the electric utility default service and provide in the statement the length of the electric utility tariff minimum stay period if applicable.

- b) Automatic Renewal. In addition to complying with the Illinois Automatic Renewal Act [815 ILCS 601], the RES shall clearly disclose any renewal terms in its contracts including any cancellation procedure. For contracts with an initial term of six months or more, the RES shall send a notice of contract renewal separate from the bill at least 30 days prior to the end of the initial contract term but no more than 60 days in advance of such date. Nothing in this Section shall preclude a RES from offering a new contract to the customer at any other time during the contract period. The separate written notice of contract renewal shall include:
- 1) A statement printed or visible from the outside of the envelope or in the subject line of the email (if customer has agreed to receive official documents by e-mail) that states, "Contract Renewal Notice;"
 - 2) The bill cycle in which service under the new term will begin;
 - 3) A statement in bold lettering, in at least 12 point font that the contract will automatically renew unless the customer cancels it, including the information needed to cancel;
 - 4) If the new contract term includes a termination fee, a statement that the customer has from the date of the contract renewal notice through the end of the existing contract term to notify the RES of his or her rejection of the new contract term to avoid incurring a termination fee under the new contract term;
 - 5) Clearly disclose the contract terms; including a full description of any renewal offers available to the customer; and
 - 6) A statement in bold lettering, in at least 12 point font, that establishing service with another RES can take up to 45 days, and failure to renew the existing contract or switch to another RES may result in the customer being reverted to the electric utility default service and provide in the statement the length of the electric utility tariff minimum stay period if applicable.

Section 412.250 Assignment

If a RES is surrendering or otherwise cancelling its certificate of service authority or is no longer seeking to serve certain customers, the RES shall not assign the agreement to a different RES unless:

- a) The new supplier is a RES;

- b) The new RES is in compliance with all applicable requirements of the Commission and the electric utility to provide electric service;
- c) The rates, terms, and conditions of the agreement being assigned do not change during the remainder of the time period covered by the agreement; provided however, the assigned agreement may be modified during the term of the agreement if the new RES and the retail customer mutually agree to such changes or revisions of the agreement after assignment of the agreement;
- d) The customer is given 15 calendar days prior written notice of the assignment by the current RES; and
- e) Within 30 days after the assignment, the new RES provides the customer with a toll-free phone number for billing questions, disputes, and complaints.

SUBPART D: DISPUTE RESOLUTION AND CUSTOMER COMPLAINT REPORTS

Section 412.300 Application of Subpart D

The provisions of this Subpart shall only apply to RESs serving or seeking to serve residential or small commercial customers and only to the extent such RESs provide services to residential or small commercial customers.

Section 412.310 Required RES Information

- a) The RES shall provide the following to the Commission's Consumer Services Division (CSD):
 - 1) A copy of its bill formats (if it bills customers directly rather than using electric utility consolidated billing);
 - 2) Standard customer contract;
 - 3) Customer complaint and resolution procedures; and
 - 4) The name, telephone number and e-mail address of the company representative whom Commission employees may contact to resolve customer complaints and other matters.
- b) The RES must file updated information within 10 business days after changes in any of the documents or information required to be filed by this section.

Section 412.320 Dispute Resolution

- a) A residential or small commercial customer has the right to make a formal or informal complaint to the Commission, and a RES contract cannot impair this

right. A RES shall not require a residential or small commercial customer as part of the terms of service to engage in alternative dispute resolution, including requiring complaints to be submitted to arbitration or mediation by third parties.

- b) A customer or applicant for power and energy service may submit a complaint by mail, facsimile transmission, e-mail, or by telephone to a RES. The RES shall promptly investigate and advise the complainant of the results within 14 calendar days. If the RES does not respond to the customer's complaint in writing, the RES shall inform the customer of the ability to obtain the RES's response in writing upon request. A customer who is dissatisfied with the RES's response shall be informed of the right to file a complaint with the Commission and the Office of the Illinois Attorney General.

- c) Complaints to the Commission.

- 1) Informal complaints.

- A) If a complainant is dissatisfied with the results of a RES's complaint investigation, the RES shall inform the complainant of their ability to file a complaint with the Commission's CSD and provide contact information for the Commission's CSD. Complaints may be filed with the Commission's CSD by phone, via the internet, by fax or by mail. Information required to process a customer complaint include:

- i) The customer's name, mailing and service addresses, and telephone number;
- ii) The name of the RES;
- iii) The customer's electric utility and RES account numbers;
- iv) An explanation of the facts relevant to the complaint;
- v) The complainant's requested resolution; and
- vi) Any documentation that supports the complaint, including copies of bills or terms of service documents.

- B) The Commission's CSD may resolve a complaint via phone by completing a three-way call between the customer, the CSD staff and the RES. If no resolution is reached by phone, and a dispute remains, an informal complaint may be sent to the RES. In the case of the electric utility purchasing the RES's receivables or utility consolidated billing, the RES shall notify the electric utility of any

informal complaint received and the electric utility shall follow the procedures outlined in their billing service agreement with the RES to withhold collection activity on disputed RES charges on the customer's bill.

- C) The RES shall investigate all informal complaints and advise the CSD in writing of the results of the investigation within 14 days after the complaint is forwarded to the RES.
 - D) The CSD shall review the complaint information and the RES's response and notify the complainant of the results of the Commission's investigation.
 - E) While an informal complaint process is pending:
 - i) The RES (or the electric utility in the case of the electric utility having purchased the RES's receivables) shall not initiate collection activities for any disputed portion of the bill until the Commission Staff has taken final action on the complaint; and
 - ii) A customer shall be obligated to pay any undisputed portion of the bill and the RES (or the electric utility in the case of the electric utility purchasing the RES's receivables or the utility presenting the RES's charges on a consolidated bill) may pursue collection activity for nonpayment of the undisputed portion after appropriate notice.
 - F) The RES shall keep a record for two years after closure by the CSD of all informal complaints. This record shall show the name and address of the complainant, the date, nature and adjustment or disposition of the complaint.
- 2) Formal complaints. If the complainant is not satisfied with the results of the informal complaint process, the complainant may file a formal complaint with the Commission pursuant to Section 10-101 of the Act.
 - 3) Disclosure of RESs' level of customer complaints. The Commission shall, on at least a quarterly basis, prepare a summary of all formal and informal complaints received and publish it on its web site. The summary shall be in an easy-to-read and user friendly format.